



Federal Communications Commission
Washington, D.C. 20554

2001 MAR -6 A 10: 38

March 2, 2001

Robert Lewis Thompson
Thiemann Aitken & Vohra, LLC
908 King Street, Suite 300
Alexandria, Virginia 22314

FILED

DOCKET FILE COPY ORIGINAL

Dear Mr. Thompson:

This is in response to your request for dismissal of the Petition for Rule Making you filed on behalf of Elgin FM Limited Partnership proposing the substitution of Channel 293A for Channel 294A at Llano, Texas, reallocation of Channel 294A to Lorena, Texas, and modification of the construction permit for Station KEXX accordingly. In addition to the request for dismissal, you also submitted a declaration pursuant to Section 1.420(j) of the Commission's Rules stating that neither Elgin FM Limited Partnership nor its principals has received any consideration for requesting the dismissal of its petition for rulemaking for Lorena, Texas.

Although you have requested dismissal of the petition for Llano and Lorena, a staff engineering analysis has determined that the proposed request for a change of community of license does not comply with Section 1.420(i) of the Rules. Specifically, Channel 293A at Llano, Texas, is not mutually exclusive with Channel 294A at Lorena, Texas, at your specified site (31-22-56 and 97-12-46). While our analysis shows that the proposed site for Channel 294A at Lorena is 164.9 kilometers from the construction permit site for Station KEXX, Channel 293A, the Rules only require a separation of 72 kilometers for first adjacent Class A to Class A channels. The change of community rule clearly requires mutual exclusivity between the current community of license and proposed community of license. Therefore, the reallocation could not be considered.

Based on the above discussion, we are returning your petition for Llano and Lorena, Texas.

Sincerely,

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

RECEIVED

FEB 7 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of 73.202(b))

Table of Allotments)

FM Broadcast Stations)

(Llano and Lorena, TX))

MM Docket No. 01-__

To: Chief, Allocations Branch
Mass Media Bureau

Request for Dismissal

Elgin FM Limited Partnership ("Elgin"), permittee of station KEXX (FM), Llano, TX, respectfully requests that the FCC dismiss its January 26, 2001 Petition for Rulemaking, which seeks that the FCC institute a Rule Making proceeding that proposes to amend the FM Table of Allotments by (i) substituting channel 294A for channel 293A at Llano, TX, (ii) deleting channel 294A at Llano and allocating it to Lorena, TX as a first local aural service and (iii) allocating channel 271A as a replacement for channel 293A at Llano, TX.

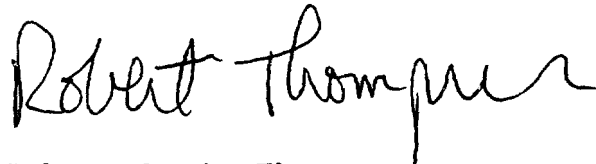
Elgin has learned that a factual predicate for the Petition does not exist and, hence, the Petition must be dismissed.

Elgin's Petition was based on a technical premise -- namely, that another Petition for Rulemaking -- to allocate channel 295A at Hewitt, TX -- was being dismissed. In fact, a request to dismiss that Hewitt rulemaking was filed by that Petitioner (Bordeaux Radio Broadcasting) on January 26, 2001, the same day as Elgin's Petition for Rulemaking was filed at the FCC. However, unknown to either of those parties, the FCC had adopted an NPRM in the Hewitt case two days earlier, on January 24, 2001

(but not released until February 2, 2001). Hence, although Elgin had "good cause" to believe that the prior proposal to allocate channel 295A to Hewitt was no bar to its petition, subsequent events proved that assumption to be incorrect. This request to dismiss follows.

An appropriate Declaration of No Consideration is attached to this request.

Respectfully submitted,

A handwritten signature in black ink, reading "Robert Thompson". The signature is fluid and cursive, with the first name "Robert" and last name "Thompson" clearly legible.

Robert Lewis Thompson
THIEMANN AITKEN & VOHRA, LLC
908 King Street, Suite 300
Alexandria, VA 22314
(703) 836-9400
rlt4fcc@erols.com

Counsel for Elgin FM Limited Partnership

February 7, 2001

SWORN DECLARATION

Jose J. Garcia, Jr., states under penalty of perjury:

1. My name is Jose Garcia, I am a resident of the State of Texas and I am the Vice-president of Dynamic Radio Broadcasting Corporation, the general partner of Elgin FM Limited Partnership ("Elgin"), permittee of station KEXX (FM), Llano, TX.

2. On January 26, 2001, Elgin filed a Petition for Rulemaking with the FCC, seeking inter alia to change the community of license for KEXX (CP) from Llano, TX to Lorena, TX.

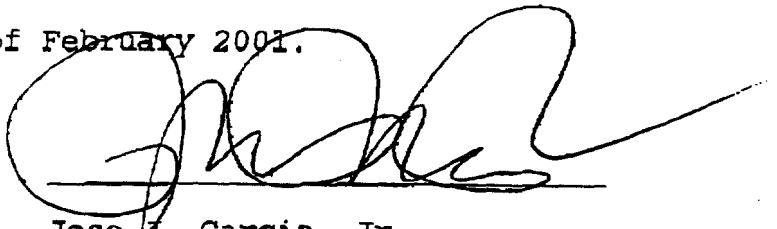
3. Subsequent to that filing, Elgin has learned that another, related rulemaking that Elgin believed was being dismissed (channel 295A at Hewitt, TX) has, in fact, become the subject of an NPRM.

Thus, Elgin's January 26, 2001 rulemaking is not viable and should be dismissed.

4. I certify that neither I nor Elgin nor any other Elgin owner has received, nor is entitled to receive, any money or other consideration, directly or indirectly, in exchange for the request to dismiss the Petition.

4. Moreover, neither I nor Elgin nor any other Elgin owner has paid nor promised to pay any consideration to any other person or entity, either directly or indirectly, in connection with the dismissal of the Petition.

Executed this 7th day of February 2001.


Jose J. Garcia, Jr.